

ARTHUR J. KENNEY

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re

Chapter 11 Case No.

LEHMAN BROTHERS HOLDINGS INC., *et al.*,

08-13555 (JMP)

Debtors.

(Jointly Administered)
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RESPONSE FROM ARTHUR J. KENNEY, *(Pro-Se)* (Submitted 12/09/2012)

NOTICE OF HEARING ON
THREE HUNDRED SIXTY-SIXTH OMNIBUS
OBJECTION TO CLAIMS (EMPLOYMENT-RELATED CLAIMS)

I respectfully object to the aforementioned THREE HUNDRED SIXTY-SIXTH OMNIBUS OBJECTION by LBHI Counsel for the reasons mentioned below.

BACKGROUND:

I had filed a claim # 14076 on September 16, 2009 in the amount of \$65,172.11 representing earned and accrued commissions for Fiscal Year 2008 (starting Dec. 1, 2007 through bankruptcy in September 2008), which had been set aside for fiscal year-end RSU purchases. At that time, I had overlooked the earned and accrued commissions for the month of September 2008 on the FY 2008 MONTHLY COMMISSION STATEMENT (which I had provided as documentation with the 09/16/2009 filing). I amended the filing to include these overlooked, earned and accrued commissions (an incremental \$16,425.55) and was assigned an amended claim # 67880.

LBHI Objection:

The Three Hundred Sixty-sixth Omnibus Objection, with reference to my Claim # 67880 , is that it contains employee-related matters (\$16,425.55 of the \$81,597.66), and that the balance is duplicative of Claim # 14067 and should therefore be expunged and Claim # 14067 (reflecting the netted amount of \$65,172.11) should be the surviving claim. I have excerpted the relevant segments of Exhibit A and Exhibit B (from the Omnibus Objection document, and have pasted the relevant segments below for easy reference.

FROM EXHIBIT A

CASE		FILED		AMOUNTS TO BE	
NAME	NUMBER	DEBTOR NAME	DATE	CLAIM #	DISALLOWED
KENNEY, ARTHUR J.	08-13555 (JMP)	Lehman Brothers Holdings Inc.	02/10/2012	67880	\$81,597.66

FROM EXHIBIT B

Claimant Name	Claim #	Duplicative Claims	Bonus/Unused Vacation Claims	Non-Debtor Employee Claims	401(k) Claims
KENNEY, ARTHUR J.	67880	X Surviving Claim: 14067			

RESPONSE:

- On the matter of there being duplicative claims, it was my understanding that the originally filed Claim # 14067 filed 09/16/2009 would be expunged upon my filing Amended Claim # 67880 on 02/10/2012, while reserving my right to amend the proof of claim to reflect the proper level of liability if and when additional facts might become available.
- On the matter of it being solely an employee-related claim, may I make the following points:
 - As reflected in the FY 2008 MONTHLY COMMISSION STATEMENT which I had attached to the original Claim # 14067 filed 09/16/2009 and Amended Claim # 67880 filed 02/10/2012, the Amended Claim includes accrued and unpaid commissions for September 2008.*
 - Of these September commissions, a portion (20-25% or more, depending on title, VP, SVP, etc.) would be accrued for RSU purchases. The segregation on this statement would not have been reflected until the end of the month, as evidenced for example by the preceding months, e.g., August 2008.*
 - During the Discovery meeting on November 28th, the third request was for information regarding the accounting treatment for RSUs and with this objection, it requires an explanation of the accounting for RSU accruals at LBHI as commissions were generated as the month progressed.*

3. It is also my contention that Lehman Brothers Holdings, Inc. did not provide Lehman Brothers Inc. with sufficient capital to permit it to operate properly. As a commission salesperson, the attached Monthly Commission Statement (attached below for easy reference) shows that though significant Gross Production was generated right up until the time of bankruptcy, LBHI did not supply LBI with sufficient capital to pay commissions generated that month.

REQUEST:

In summary, I had amended Claim # 14067 (09/16/2009) by filing Amended Claim # 67880 on 02/10/2012, the difference being that the amended claim included commissions accrued during September 2008 until the bankruptcy filing. As referenced above in "Response 2B" and in The Employee Handbook, a portion of my commissions was segregated during each pay period into Cash Commissions and Accrual Commissions, but the statement that was available for my access did not contain the level of sophistication to discern the exact breakdown for the Commissions (\$16,425.55) earned from September 1 through the date of bankruptcy. As evidenced from the FY 2008 MONTHLY COMMISSION STATEMENT (attached) the accrual for future RSU purchases through August 2008 (which were never done) were \$94,853.11 out of my total FY '08 commission compensation of \$553,029.83 or 17.15 %. The September Commission accrual of \$16,425.55 does not reflect the break-down of the cash compensation component vs. the RSU accrual component which would have been reflected in LBHI's accounting treatment. (N.B., I had properly netted-out \$29,681 of accruals for the July purchases of RSUs.)

I respectfully request that the Court consider instead expunging instead the original Claim # 14067 (filed 09/16/2009), if it would not compromise my liability claim against LBHI contained within the Amended Claim # 67880 (filed 02/10/2012) for earned, accrued commissions which were aggregated during Fiscal Year 2008 for RSUs never purchased which are evidenced in the attached statement. That would allow LBHI and its Attorneys to develop a more realistic picture of the true scope of its liabilities, while not compromising the part of my claim pertaining to the September Commissions which could be further amended, as warranted by future rulings by the Court.

ATTACHMENT: FY 2008 MONTHLY COMMISSION STATEMENT

[illegible]